

UNITED STATES DISTRICT COURT
DISTRICT OF PUERTO RICO

RAFAEL FERNÁNDEZ-HERNÁNDEZ,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

Civil No. 12-1761 (JAF)

(Crim. No. 07-453-JAF-13)

ORDER

On September 14, 2012, Petitioner Rafael Fernández-Hernández (“Fernández-Hernández”) filed a petition under 28 U.S.C. § 2255 to vacate, set aside, or correct his sentence in Crim. No. 07-453-JAF-13. (Docket No. 1.) The underlying facts of his criminal case are discussed in our previous opinion. (Docket No. 15.) On December 27, 2013, we summarily denied his § 2255 petition because it plainly appeared from the record that Fernández-Hernández was not entitled to § 2255 relief from the court. (Docket Nos. 15, 16.)

On February 3, 2014, Fernández-Hernández filed notice that he was appealing our order as USCA Case No. 14-1198. (Docket Nos. 17-19.) On March 5, 2014, Fernández-Hernández filed a motion for certificate of appealability and a motion for reconsideration under Rule 59(e). (Docket No. 20.) The joint motion rehashes previous arguments. Fernández-Hernández asserts that we ignored his original arguments and instead wrote a “red-herring opinion.” He also asserts that this court favors the prosecution and should recuse itself. (Docket No. 20.)

We grant a certificate of appealability (“COA”) only upon “a substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2). To make this showing,

1 “[t]he petitioner must demonstrate that reasonable jurists would find the district court’s
2 assessment of the constitutional claims debatable or wrong.” Miller-El v. Cockrell, 537
3 U.S. 322, 338 (2003)(quoting Slack v. McDaniel, 529 U.S. 473, 484 (2000)). In
4 rehashing his previous arguments, Fernández-Hernández has failed to make such a
5 showing. Therefore, we do not grant a COA.

6 Fernández-Hernández’s motion to alter the judgment is time-barred. Federal Rule
7 of Civil Procedure 59(e) states that “a motion to alter or amend a judgment must be filed
8 no later than 28 days after entry of the judgment.” Judgment was entered on
9 December 27, 2013. FED. R. CIV. P. 59(e). Therefore, Fernández-Hernández had until
10 January 24, 2014, to file a motion to alter or amend the judgment. Because he filed the
11 motion on March 5, 2014, we do not have jurisdiction to alter or amend the prior
12 judgment.

13 For this reason, Fernández-Hernández’s joint motion for certificate of
14 appealability and for reconsideration (Docket No. 20) is **DENIED**.

15 **IT IS SO ORDERED.**

16 San Juan, Puerto Rico, this 25th day of March, 2014.

17 S/José Antonio Fusté
18 JOSE ANTONIO FUSTE
19 U. S. DISTRICT JUDGE